

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION**

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Michael Nichols,	:	
	:	Civil Action No.: 5:16-cv-00044
	:	
Plaintiff,	:	
v.	:	
	:	
USAA Savings Bank,	:	<b>COMPLAINT</b>
	:	
Defendant.	:	
	:	
	:	

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For this Complaint, Plaintiff, Michael Nichols, by undersigned counsel, states as follows:

**JURISDICTION**

1. This action arises out of Defendant's repeated violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.* (the "TCPA").
2. Venue is proper in this District pursuant to 28 U.S.C. § 1331(b), in that Defendant transacts business in this District and a substantial portion of the acts giving rise to this action occurred in this District.

**PARTIES**

3. Plaintiff, Michael Nichols ("Plaintiff"), is an adult individual residing in Alexandra, Virginia, and is a "person" as defined by 47 U.S.C. § 153(39).
4. Defendant USAA Savings Bank ("USAA"), is a Texas business entity with an address of 9800 Fredericksburg Road, San Antonio, Texas 78288, and is a "person" as defined by 47 U.S.C. § 153(39).

## **FACTS**

5. In or around April 2015, USAA began placing calls to Plaintiff's cellular telephone, number 703-xxx-1574, using an automatic telephone dialing system ("ATDS") and/or using an artificial or prerecorded voice.

6. When Plaintiff answered calls from USAA, he heard a prerecorded message stating that the call was from USAA.

7. During a conversation with a live representative on or about July 20, 2015, Plaintiff demanded that USAA cease all calls to his cellular telephone.

8. Nevertheless, USAA continued to place automated calls to Plaintiff's cellular telephone number.

## **COUNT I** **VIOLATIONS OF THE TCPA – 47 U.S.C. § 227, et seq.**

9. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

10. At all times mentioned herein, Defendant called Plaintiff's cellular telephone using an ATDS and/or using a prerecorded or artificial voice.

11. Defendant placed automated calls to Plaintiff's cellular telephone despite knowing that it lacked consent to do so. As such, each call placed to Plaintiff was made in knowing and/or willful violation of the TCPA, and subject to treble damages pursuant to 47 U.S.C. § 227(b)(3)(C).

12. The calls from Defendant to Plaintiff were not placed for "emergency purposes" as defined by 47 U.S.C. § 227(b)(1)(A)(i).

13. Defendant's telephone system has the capacity to store numbers in a random and sequential manner.

14. Plaintiff is entitled to an award of \$500.00 in statutory damages for each call made in negligent violation of the TCPA pursuant to 47 U.S.C. § 227(b)(3)(B).

15. As a result of each call made in knowing and/or willful violation of the TCPA, Plaintiff is entitled to an award of treble damages in an amount up to \$1,500.00 pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff prays that judgment be entered against Defendant:

1. Statutory damages of \$500.00 for each violation determined to be negligent pursuant to 47 U.S.C. § 227(b)(3)(B);
2. Treble damages for each violation determined to be willful and/or knowing pursuant to 47 U.S.C. § 227(b)(3)(C); and
3. Such other and further relief that the Court may deem just and proper.

**TRIAL BY JURY DEMANDED ON ALL COUNTS**

Dated: January 17, 2016

Respectfully submitted,

By: /s/ Sergei Lemberg

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